THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.29740 OF 1995

DATED:21.11.2006

BETWEEN:

R.V.Subba Rao … Petitioner.
And another

And

Director of Indian Medicine & Homeopathy,
Hyderabad
and two others.
… Respondents.

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WRIT PETITION NO.29740 OF 1995

ORDER:

Petitioners seek relief of absorption as Registered Medical Practitioner Doctor and Maternity Assistant respectively in the medical Rural Dispensary, Petnikota, Kurnool district. According to the petitioners, they have been working at Petnikota rural dispensary as Rural Medical Practitioner and Maternity Assistant respectively since 22.6.1979. The petitioners' grievance is two fold, namely, their non-absorption and also the non-payment of regular scale. As regards the relief of absorption, the learned counsel for the petitioner Sri G.Ravi Mohan, fairly conceded that he is not pressing the same. Hence, I need not deal with the said aspect.

As regards payment of regular pay scale, in the counter affidavit dated 4.4.1997 filed on behalf of the first respondent, it is mentioned that the honorarium which was paid at Rs.50 and Rs.25 per month to the R.M.Ps., and Maternity Assistants respectively is subsequently enhanced to Rs.1,400/- and Rs.500/- respectively. In the additional counter affidavit filed on 28.9.2006 on behalf of the first respondent it was mentioned that the R.M.Ps., and Maternity Assistants are paid honorarium as fixed by the Government from time to time. The learned Government Pleader has produced a copy of G.O.Ms.No.18, Health Medical and Family Welfare (R2) Department, dated 21.1.2004

wherein the honorarium for R.M.Ps., is enhanced to Rs.3,000/- per month and for maternity Assistants to Rs.1,500/- per month. The learned Government Pleader states that this G.O., is in operation as on today. The learned Government Pleader produced another G.O.No.153 dated 11.5.2005 wherein this honorarium is enhanced to Rs.5,000/- to all the Vaidya Vidwan Candidates working in rural dispensaries. It is not disputed by the learned Government Pleader that the first petitioner is a Vaidya Vidwan Candidate.

However, there is a dispute relating to the fact whether the petitioner has been actually working in order to get the benefit of payment of honorarium. In the additional counter affidavit filed on 28.9.2006 at page-2 it is mentioned as follows:

> " The applicant is having Vaidya Vidwan Qualification and working as RMP and another applicant is working as Maternity Assistant in rural dispensary and the applicants are only part time employees in the institutions of Zilla Parishads and they have been paid only honorarium from out subsidy made available by the Government to the Zilla Parishads and it could not be possible by the Government to consider their cases for payment of regular scale of pay. The applicant is having Vaidya Vidwan qualification which comes under 'B' Class status under the provisions of Ayurveda and Homeopathy Medical Practitioners Registration Act 1956 and this institution is only an examining body."

Another counter affidavit was filed on behalf of R-1 in November 2006 wherein it is mentioned as under:

> " In reply to para-9 it is submitted that, this Department is being paid the subsidy and issued the Technical further continuation on the proposals/Reports of the MPDOs concerned which is the parental department. On the same analogy, in this case the further continuation and subsidy have not been paid to the petitioner for the period from 1996 onwards in view of the reports submitted adversely on the petitioner by the MPDO, Kolimigundla (M) (2nd respondent)

> that the petitioner is neither working as RMP nor the dispensary building is utilized for the purpose of running of the Dispensary, but the building is being used for Gram Panchayat Office, as such the claim of the petitioner that the subsidy has not been paid to him does not arise. The action of this department for not releasing the subsidy is purely based on the reports of the MPDO, (2nd respondent) and is sustainable in law."

Certain material papers were filed along with counter affidavit filed in November 2006. The letter Rc.No.Supdt./347/2005, Dated 30.11.2005 addressed by the Mandal Parishad Development Officer, Kolimigundla mandal which was addressed to the Commissioner, Department of AYUSH, shows that the Panchayat Secretary, Gram Panchayat Sarpanch and villagers reported that the 1st petitioner (R.V.Subba Rao) is not working at Petnikota village since the year 1998 and that the Rural Dispensary at the said place is not functioning since 1998. Another letter was addressed on 3.11.2006 by the MPDO to the Commissioner, Department of AYUSH to the effect that his recent visit to Petnikota village during which he enquired from the villagers, revealed that the petitioner is not working since 1998 and the dispensary is not functioning. However, proceedings dated 15.3.2005 of the Additional Director, Ayush show that on 9.3.2005, the MPDO sent a proposal to continue the Rural Medical Practitioner and Maternity Assistant at Kolimigundla mandal from 1.4.1998 to 31.3.2005, the same was ratified. There are thus, contradictory reports on the continuance or otherwise of the petitioners. In view of the severely disputed questions of fact, it is not possible for this Court to give a finding as to whether the petitioners have actually been working since 1996.

I, therefore, deem it appropriate to direct the first respondent to cause an enquiry to be made and decide whether the petitioners have

actually been working as RMP and Maternity Assistant respectively. If the petitioners are found working, they shall be paid the arrears of honorarium in terms of orders that are in force from time to time including G.o.Ms.No.18 dated 21.1.2004 and G.O.Ms.No.153 dated 11.5.2005 for the respective periods and continue to pay them the monthly honorarium in future so long as they work. The first respondent shall complete the exercise within a period of one month from today.

With the aforementioned direction, the writ petition is disposed of. No order as to costs.

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21.11.2006.

Note:
C.c. in three days.

B/o.
Mdaa